

**U.S. Department of Agriculture
Food and Nutrition Service
Administrative Review Branch**

Bestway Convenience Store,

Appellant,

v.

Case Number: C0203375

Retailer Operations Division,

Respondent.

FINAL AGENCY DECISION

The U.S. Department of Agriculture, Food and Nutrition Service (FNS), finds that there is sufficient evidence to support the determination by the Retailer Operations Division to impose a permanent disqualification against Bestway Convenience Store (hereinafter Appellant) from participating as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP).

ISSUE

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with Title 7 of the Code of Federal Regulations (CFR) § 278.6(a), (c) and (e)(1)(i), when it imposed a permanent disqualification against Appellant on November 20, 2017.

AUTHORITY

According to 7 U.S.C. § 2023 and its implementing regulations at 7 CFR § 279.1, “A food retailer or wholesale food concern aggrieved by administrative action under § 278.1, § 278.6 or § 278.7 . . . may . . . file a written request for review of the administrative action with FNS.”

CASE CHRONOLOGY

In a letter dated October 26, 2017, the Retailer Operations Division charged the Appellant with trafficking, as defined in Section 271.2 of the SNAP regulations, based on a series of irregular SNAP transaction patterns that occurred during the months of May 2017 through September 2017. The letter noted that the penalty for trafficking is permanent disqualification as provided by 7 CFR § 278.6(e)(1). The letter also noted that the Appellant could request a trafficking civil money penalty (CMP) in lieu of a permanent disqualification within ten days of receipt under the conditions specified in 7 CFR § 278.6(i).

Appellant responded to the charges in a letter dated October 31, 2017, that admitted to the business offering credit accounts, but the response neither requested nor contained any evidence to be considered in support of the CMP. The Retailer Operations Division, by letter dated November 3, 2017, requested evidence of the existence of credit accounts at the business. Appellant responded to their request in a letter dated November 9, 2017, submitting documentation of credit accounts. The Retailer Operations Division notified Appellant in a letter dated November 20, 2017, that the firm was permanently disqualified from participation as an authorized retailer in SNAP in accordance with Section 278.6(c) and 278.6(e)(1) for trafficking violations. This determination letter also stated that Appellant's eligibility for a trafficking CMP according to the terms of Section 278.6(i) of the SNAP regulations was considered. However, the letter stated ". . . you are not eligible for the CMP because you failed to submit sufficient evidence to demonstrate that your firm had established and implemented an effective compliance policy and program to prevent violations of the Supplemental Nutrition Assistance Program."

By letter dated November 25, 2017, Appellant appealed the Retailer Operations Division's assessment and requested an administrative review of this action. The appeal was granted. No subsequent correspondence was received from Appellant.

STANDARD OF REVIEW

In an appeal of an adverse action, Appellant bears the burden of proving by a preponderance of evidence that the administrative action should be reversed. That means Appellant has the burden of providing relevant evidence that a reasonable mind, considering the record as a whole, would accept as sufficient to support a conclusion that the argument asserted is more likely to be true than untrue.

CONTROLLING LAW

The controlling law in this matter is contained in the Food and Nutrition Act of 2008, as amended (7 U.S.C. § 2021), and implemented through regulation under Title 7 CFR Part 278. In particular, 7 CFR Part 278.6(a) and Part 278.6(e)(1)(i) establish the authority upon which a permanent disqualification may be imposed against a retail food store or wholesale food concern in the event that personnel of the firm have engaged in trafficking of SNAP benefits.

7 U. S. Code § 2021(a)(2) states, "Regulations promulgated under this chapter shall provide criteria for the finding of a violation of, the suspension or disqualification of and the assessment of a civil penalty against a retail food store or wholesale food concern on the basis of evidence that may include facts established through on-site investigations, inconsistent redemption data, or evidence obtained through a transaction report under an electronic benefit transfer system."

In addition, 7 CFR § 278.6(a) states, in part, "FNS may disqualify any authorized retail food store . . . if the firm fails to comply with the Food and Nutrition Act of 2008, as amended, or this part. Such disqualification shall result from a finding of a violation on the basis of evidence that may include facts established through on-site investigations, inconsistent redemption data, evidence obtained through a transaction report under an **electronic benefit transfer system**" (Emphasis added.)

7 CFR § 278.6(e)(1)(i) reads, in part, “FNS shall . . . [d]isqualify a firm permanently if . . . personnel of the firm have trafficked as defined in § 271.2. ” Trafficking is defined, in part, in 7 CFR § 271.2, as, “The buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits . . . for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone” Trafficking is further defined, in 7 CFR § 271.2, to include “(5) Intentionally purchasing products originally purchased with SNAP benefits in exchange for cash or consideration other than eligible food.”

7 CFR § 278.2(f) states, inter alia: “Coupons [SNAP benefits] shall not be accepted by an authorized retail food store in payment for items sold to a household on credit.”

7 CFR §278.6(i) states, inter alia: “FNS may impose a civil money penalty in lieu of a permanent disqualification for trafficking . . . if the firm timely submits to FNS substantial evidence which demonstrates that the firm had established and implemented an effective compliance policy and program to prevent violations of the Program.”

7 CFR §278.6(b)(2)(ii) states, inter alia: “Firms that request consideration of a civil money penalty in lieu of a permanent disqualification for trafficking shall have the opportunity to submit to FNS information and evidence . . . that establishes the firm’s eligibility for a civil money penalty in lieu of a permanent disqualification in accordance with the criteria included in §278.6(i). This information and evidence shall be submitted within 10 days, as specified in §278.6(b)(1).” Part 278.6(b)(2)(ii) further states that if a firm fails to request consideration for a civil money penalty in lieu of a permanent disqualification for trafficking and submit documentation and evidence of its eligibility within the 10 days specified in Part 278.6(b)(1), the firm shall not be eligible for such a penalty.

SUMMARY OF THE CHARGES

The issue in this review is whether, through a preponderance of evidence, it is more likely true than not true that the questionable transactions were the result of trafficking. The charges on review were based on an analysis of SNAP EBT transaction data during the five month period of May 2017 through September 2017. This involved two patterns of EBT transaction characteristics indicative of trafficking:

1. Multiple transactions were made from individual benefit accounts in unusually short time frames.
2. Excessively large purchase transactions were made from recipient accounts.

APPELLANT’S CONTENTIONS

In the response to the letter of charges, in the response for the verification of credit accounts, and in the request for administrative review, Appellant has stated as its position in the matter the following:

- Ownership helps out low income families in the neighborhood with kids by giving them

food items on credit and when they get their SNAP benefits on the 1st of each month they pay the owners back. Ownership has always helped people in the neighborhood that they have known for a long time, even those without EBT, and is now being punished for helping them. This is a big help for the business and that's why they have been able to stay in business. The owners are unable to provide cash register receipts for the credit charges as the business has a simple cash register that does not scan or itemize items;

- The owners are behind on rent and other debts and struggling to stay in business. SNAP sales have declined the last two or three years and if they were doing something wrong or involved in cash exchange, the redemptions would be going up, not down;
- The business does not sell money orders, offer bill payment, or sell gas. It is loaded with food items compared to any other convenience store in the area. There are mentally ill people and those without transportation who shop at the business and that's why the owners keep the store stocked all the time so these people can buy common food goods. The business has a better selection and variety of food, drinks, as well as frozen foods. Convenience store prices are slightly higher. Also, May to September is summer time and the tourists are in town. The store can also not refuse a sale and some people have no transportation. Appellant submitted credit card statements for May-September 2017 as well as credit/debit slips that show large transactions;
- The transactions in a short time are because of the customer. Sometimes they may want to see their balance and that's why there are two different orders;
- After this issue is resolved, the owners will post a sign in the window limiting SNAP purchases to \$20 or \$30; and,
- Customers are very disappointed and letters are enclosed from them. Additionally, the business is not accepting EBT from October 27, 2017, until the issue is resolved. The owners request mercy and a second chance to keep helping people.

Appellant submitted five pages of Merchant Card Processing Statements, 15 pages of credit/debit card receipts, one page showing sample cash register receipts, and handwritten letters from two customers who claim to have received store credit in support of these contentions.

The preceding may represent a summary of Appellant's contentions in this matter, however, in reaching a decision, full attention and consideration has been given to all contentions presented, including any not specifically recapitulated or specifically referenced herein.

ANALYSIS AND FINDINGS

The Retailer Operations Division presented a case that Appellant trafficked SNAP benefits. Each Attachment furnished with the letter of charges represents the questionable and unusual patterns of SNAP transactions indicative of trafficking which were conducted at the Appellant business during the review period. As patterns of unusual transactions appear across multiple Attachments, the case of trafficking becomes more convincing.

Store Background and FNS Store Visit

The FNS most recently reauthorized the business on December 23, 2011, and the business is classified as a convenience store. The file shows that the business received a hardship CMP in

lieu of a six month disqualification in 2014 based on the results of an undercover investigation showing that personnel at the Appellant business exchanged SNAP benefits for ineligible nonfood items. The file also indicates that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a September 22, 2017, store visit conducted by a FNS contractor to observe the nature and scope of the firm's operation, stock, and facilities. This information was then used to ascertain if there were justifiable explanations for the EBT transactions at Appellant's store that formed patterns indicative of trafficking. The store review summary documented the following store size, description, and characteristics:

- The business was a small store offering a minimal quantity and variety of staple foods and carrying no unique eligible food items.
- The business stocked typical mainstream American brand products and no ethnic or unique foods.
- Exterior signage advertised lottery, beverages, ATM, candy, snacks, ice cream, energy drinks, cigarettes, and propane tanks.
- A store employee stated that the business did not allow telephone or online orders and did not have delivery service.
- There were no shopping carts or handheld baskets for customer use seen during the visit making it difficult for customers to carry large amounts of food to the checkout.
- The checkout area was an opening approximately 1.5 feet deep by 2.0 feet wide set between two walls of plastic storage with displays taking up counter space on both sides and a chest type ice cream freezer directly in front of it that customers must reach over in order to place their purchases on the counter. The small size of the checkout area would make it problematic to process large orders.
- The checkout counter had one cash register, one POS terminal, and no optical scanner as evidenced by the store visit report and photographs.
- No food packages, bundles, bulk products, case sales, or other sales were evident that would explain the unusual transactions and no SNAP eligible cased items were available for purchase except for beverages.
- The store visit report specifically notes that the business was not a specialty store and that there were no meat bundles or fruit and vegetable boxes for sale.
- The store had a minimal stock of staple foods that also included many single serving and pre-packaged items with a large portion of inventory in accessory foods (primarily candy and drinks), snacks, and ineligible items.
- The store had no fresh unprocessed meats or seafood, no frozen unprocessed meats or seafood, an extremely limited quantity and variety of processed meats and seafood (canned meat/fish/poultry, jerky, four packages of hot dogs, four packages of bacon, and packaged lunch meats), no sausages, no deli meats, a very limited quantity and variety of frozen entrees and frozen dinners, no fresh fruit and vegetables, no frozen fruits, an extremely limited stock of frozen vegetables, no dried beans, a very limited quantity and variety of canned and packaged staple food items, only three sour cream, no yogurt, only three butter, no deli cheeses, limited packaged cheese, no baby foods, no baby cereals, no infant formula, no corn meal, no tortillas or tostados, and very few expensive eligible food items.

- Ineligible items included: tobacco, tobacco accessories, lottery, household products, paper products, auto products, pet products, health and beauty items, ATM, charcoal, sunglasses, greeting cards, fireplace logs, magazines, and newspapers while accessory foods included: candy, spices, condiments, coffee, tea, cocoa, cooking oil, sugar, and carbonated/ uncarbonated drinks.
- Signage was in English and there were no SNAP posters (anti-fraud, eligible items, reporting trafficking, etc.) visible in the store.
- The business's hours of operation were 6:00 AM-10:00 PM daily as confirmed by a store employee during the store visit.
- Most food items were priced with all visible staple food prices ending in .x9 cents except for a very limited number of items priced differently such as some snacks and drinks priced at 50 cents, two for \$1.00, two for \$3.00, and two for \$4.00. Comments on the FNS store visit report by the contract reviewer specifically stated that most of the food prices ended in .x9 cents. A price ending in .x9 cents is the most common pricing structure for stores of this type.
- The FNS store visit report listed the four most expensive items costing more than \$5.00 for sale in the store as being a 29 ounce box of processed frozen chicken priced at \$8.99, a 32 ounce box of frozen hamburgers priced at \$8.99, a 3.25 ounce bag of jerky priced at \$6.99, and a 16 ounce container of ice cream priced at \$5.49. The listing of the most expensive items was provided by a store employee during the store visit.
- The store was not a WIC vendor and did not stock any baby foods or infant formula.
- The store visit report and photographs showed that several shelves, coolers, and display racks were marginally stocked and that a chest freezer was empty.
- The quantity and variety of the store's staple food inventory was noticeably less than that seen during the previous FNS store visit on October 9, 2015.

Multiple transactions in unusually short time frames

This Attachment documents 25 individual transactions in 12 sets of two or more transactions conducted by four different households in a short period of time.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). These sets of transactions appear to be in amounts which are indicative of trafficking.

Appellant contends the short time frames are because customers sometimes may want to see their balance and that's where there are two different orders.

SNAP households have no limit on the number of times they may use their benefits or the dollar value of eligible food they may purchase. The SNAP transactions listed in this Attachment are questionable not because they exceed any limits for use, but rather because they display characteristics of use inconsistent with the nature and extent of a convenience store's stock and facilities and are thus indicative of trafficking. **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. It should be also noted that as required by SNAP regulations at 274.12 (f), the EBT card holder must be able to check their account balance using the retailer's POS terminal without making any purchases or standing in a checkout line, and they can telephone a toll-free number for that information as well. Regulations also require that EBT card holders receive a POS terminal receipt showing the

dollar amount of remaining benefits so, contrary to Appellant's contention, it would be unusual for many households to not know their SNAP balance.

It is certainly not unusual for a small number of SNAP households to conduct multiple transactions in a short period of time. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). These multiple transactions indicate that the amounts were contrived in an attempt to avoid suspiciously high transactions that would be indicative of trafficking by breaking them into multiple, smaller amounts. FNS transaction data shows that this same pattern of multiple transactions in unusually short time frames is not evident at other nearby like type convenience stores further supporting that trafficking was occurring at the Appellant business during the period under review.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). SNAP benefit transactions involving legitimate food purchases require many steps: 1) the customer waiting for the previous customer to pick-up their purchases and leave the checkout area; 2) the customer making multiple trips bringing items to the checkout counter for large purchases since the business has no shopping carts or hand baskets; 3) the cashier separating eligible from ineligible items; 4) the cashier handling individual items to determine the price, which in this case involved manual keying of amounts since there is no scanner; 5) the cashier weighing individual items if sold by weight; 6) the cashier entering prices into a register or adding machine, once for eligible foods and once for ineligible items, which is typical for larger purchases; 7) the cashier handling manufacturers cents-off coupons, if applicable; 8) the cashier bagging the items for carry-out; 9) the cashier informing the customer of the totals (one for eligible foods and one for non-eligible items, if applicable, which for large purchases includes most transactions); 10) the cashier pressing the "SNAP transaction key" on the POS device/card reader; 11) the customer swiping their EBT card; 12) the customer entering their required PIN; 13) the cashier entry of the purchase amount; 14) the cashier confirming the customer has a sufficient benefit balance; 15) the transaction being processed by the system and receiving approval; 16) the cashier printing the EBT and cash register receipts; 17) the cashier accepting an alternate form of payment for nonfoods and possibly handling cash change; and 18) the customer removing products from the checkout area so the next customer in line can begin the next transaction. All or most of these steps are inherent in most legitimate large SNAP purchases. One can readily surmise that while such transactions may be completed in succession, performing these processes on large transactions is not done rapidly. The amount of time required is generally proportional to the dollar amount of the transaction; typically, the larger the dollar amount transacted the longer the time period between transactions. The extremely limited counter space as well as manually key-entering multi-digit EBT card numbers adds additional time to transactions.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). It is therefore improbable that large dollar value transactions for the purchase of legitimate food items which would consist of a substantial number of lower priced items based on Appellant's stock could be processed in the times listed in this Attachment given that the Appellant business has very limited checkout counter space, no carts or baskets, and no scanner. The large transaction dollar amounts and the short interval between transactions in this Attachment demonstrate the improbability of these being legitimate eligible food purchases and suggest trafficking as the most likely explanation.

An analysis of the shopping patterns for households listed in this Attachment shows that they have ready access to transportation as evidenced by their shopping at a variety of other larger food stores located nearby and at a distance from Appellant's location with all of the households shopping at a large number of super stores and supermarkets. This analysis further shows that three of the four households conducted 12 or fewer transactions at the Appellant business during the five month period under review with one household conducting only two transactions indicating that 75 percent of the households in this Attachment are not regularly shopping at the Appellant business and would therefore not be likely to conduct multiple transactions totaling to large dollar amounts in short periods of time. This analysis also found that all four households only shopped at other stores located 2.82 miles or further away with two of the households primarily shopping at other stores located more than 4.0 and 5.8 miles from Appellant's location. This is an indication that as many as 50 percent of the households in this Attachment may reside at a distance from the Appellant business and brings-up the question of why would these households elect to travel a sizeable distance, often several miles round trip from their regular shopping areas, past numerous larger and better stocked stores to conduct multiple purchases at a minimally stocked convenience store that carries no unique foods or offers any special services. Appellant's contentions fail to offer any explanation or rationale for these unusual and suspicious shopping patterns. Common sense dictates that it is improbable that households with limited cash resources would choose to travel these distances if their purchases consisted solely of eligible food items that could be purchased at any of the super stores and/or supermarkets they were already regularly shopping at and therefore more likely than not that these households were trafficking SNAP benefits at the Appellant business and the multiple transactions were attempts by to obscure trafficking by dividing a large dollar value transaction into a series of smaller dollar value transactions. This is a method used by stores to avoid high dollar transactions that cannot be supported. This is further supported by the fact that three of the four households in this Attachment shopped at a super store or supermarket on the same day as they conducted large transactions at the Appellant business.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). Manually keyed transactions are those in which the magnetic strip on the back of the EBT card is not being read by the store's POS device and the clerk must manually key enter the lengthy EBT card number. When the magnetic strip on an EBT card fails, it can no longer be swiped and replacement EBT cards contain different identification numbers. On-site investigations into trafficking at retailers have found it is not uncommon for retailers to have a SNAP recipient's PIN and EBT card number in order to facilitate trafficking SNAP benefits in exchange for cash without the need for the recipient to be physically present. The retailer enters the EBT card number manually as the recipient has the actual EBT card and then enters the PIN. A review of other EBT transactions on the dates of these manual transactions shows that the Appellant business's POS device was functioning properly as there were swipe transactions before and after the manual transactions.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). Based on these factors, it is likely than not that the two manually keyed transactions were, in fact, trafficking.

There may be legitimate reasons why a SNAP household might return to a store during a short period of time, but the examples in this Attachment indicate a series of SNAP purchases that total to large dollar amounts. Multiple transactions over a short period of time, especially those of high dollar values, are indicative of attempts to obscure trafficking by dividing a large dollar

value transaction into a series of smaller dollar value transactions and are a method which violating stores use to avoid high dollar transactions that cannot be supported.

Appellant's claim of offering store credit is addressed in greater detail later in this decision.

High Dollar Value Transactions

This Attachment lists 123 individual EBT transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. The substantial number of high dollar transactions is uncharacteristic for a convenience store of this size offering a minimal stock of staple foods and calls into question the legitimacy of these transactions. The SNAP transactions listed in this Attachment are all substantially higher than the average SNAP transaction amount of \$7.32 for this store type in Washington County. **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. This is unusual and indicative of trafficking.

The evidence under review shows that SNAP households shopping at the Appellant business are also shopping at many full-line supermarkets and super stores, located nearby as well as at a significant distance from Appellant's location that offer a greater quantity and variety of SNAP eligible foods items for better prices than customers can find at the Appellant business. The large dollar transactions remain questionable when considering the proximity of these other SNAP authorized stores that would be better shopping options for consumers. Based on these shopping patterns, transportation does not appear to be an issue for these households. **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**.

5 U.S.C. § 552 (b)(7)(E). A comparison of Appellant's SNAP redemptions to that of nearby convenience stores that had redemptions for the review period shows similar differences. Additionally, none of these nearby stores exhibit the same suspicious transaction patterns listed in the charge letter for the Appellant business even though all are located in proximity to Appellant's location and would therefore be expected to share the same SNAP customer base and shopping patterns. This is a further indication that the SNAP transactions in this Attachment and the others do not represent legitimate food purchases. The Retailer Operations Division considered all of these to be indicators of unusual and suspicious activity.

Appellant contends the business does not sell money orders, offer bill payment, or sell gas. It is loaded with food items compared to any other convenience store in the area. There are mentally ill people and those without transportation who shop at the business and that's why the owners keep the store stocked all the time so these people can buy common food goods. The business has a better selection and variety of food, drinks, as well as frozen foods. Convenience store prices are slightly higher. Also, May to September is summer time and the tourists are in town. The store can also not refuse a sale. **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**.

Store ownership is correct in that it may not refuse a SNAP sale and it also may not limit the dollar amount of SNAP transactions. The SNAP transactions noted in this Attachment are not presumed to be trafficking because they exceed a set dollar amount; they are questionable because they are inconsistent for this type of store and the store's stock. An analysis of shopping patterns by the Retailer Operations Division shows that households in this Attachment are all regularly shopping at much larger stores, and conducting transactions of large dollar amounts, yet

are conducting comparable or higher dollar value transactions at the Appellant business. It would make no sense for a household that regularly shops at larger stores and apparently has no transportation limitations to spend large dollar amounts at the Appellant business since its cost of goods would be higher than that of larger stores such as supermarkets or super stores.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). A review of the EBT cards for the SNAP households listed in both Attachments shows that all are residents of Rhode Island thereby refuting the claim of tourists being responsible for the large dollar value transactions.

Information obtained during the FNS store visit on September 22, 2017, shows that the Appellant business offers a minimal quantity and variety of SNAP eligible staple food items, many accessory foods, and many ineligible items. Much of the inventory for sale consists of inexpensive snacks, beverages, and single serving foods as well as many ineligible items. Since the Appellant business offers no fresh unprocessed meats or seafood, no frozen unprocessed meats or seafood, an extremely limited quantity and variety of processed meats and seafood (canned meat/fish/poultry, jerky, four packages of hot dogs, four packages of bacon, and packaged lunch meats), no sausages, no deli meats, a very limited quantity and variety of frozen entrees and frozen dinners, no fresh fruit and vegetables, no frozen fruits, an extremely limited stock of frozen vegetables, no dried beans, a very limited quantity and variety of canned and packaged staple food items, only three sour cream, no yogurt, only three butter, no deli cheeses, limited packaged cheese, no baby foods, no baby cereals, no infant formula, no corn meal, no tortillas or tostados, and very few expensive eligible food items, these patterns are deemed to be suspicious. The fact that tobacco, tobacco accessories, lottery, household products, paper products, auto products, pet products, health and beauty items, ATM, charcoal, sunglasses, greeting cards, fireplace logs, magazines, and newspapers are not eligible for purchase with SNAP benefits also provides no justification for the high transaction amounts. The business carries no special foods or offers any unique services that are not also available at other nearby grocery stores making it unlikely that SNAP recipients with available transportation would make this business their grocery store of choice. **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**.

Increasing food prices make it even more unlikely that SNAP recipients, with limited food benefits, would want to spend a considerable part of their benefits in a convenience store that does not address all of their food shopping needs when they are already shopping at larger, fully-stocked stores that would offer a greater variety of foods at lower prices. Many of these stores would also offer store brand products at lower prices, offer weekly specials, and have shopping carts and checkouts with scanners and conveyor belts to facilitate processing purchases quickly. Additionally, Appellant furnished no itemized cash register and EBT receipts for the period under review to document the legitimacy of these excessively large transactions and no evidence was provided of SNAP eligible store stock via receipts of products taken into inventory for the relevant review months. The Appellant business has a very small checkout area and does not have shopping carts, hand baskets, or a scanner thereby making it difficult to facilitate the great quantities of eligible food items required to make up these large dollar transactions. Therefore, it is improbable that the food items purchased in these high dollar amounts could be carried to the register without the use of carts and more likely that the amounts were contrived. While the Merchant Card Processing Statements show the volume of SNAP redemptions, they provide no basis to show that the large dollar value transactions listed in this Attachment were for legitimate purchases of eligible food items. The credit and debit card receipts do show evidence of large

dollar value transactions, but do not provide credible evidence of SNAP transactions as the Appellant business carries many ineligible items that credit/debit card customers could purchase that are not eligible for purchase by SNAP customers.

Based on this discussion, Appellant did not provide adequate evidence to support the legitimacy of the excessively large transactions in this Attachment.

Credit and Other Contentions

Appellant contends the business allows credit accounts, a violation of SNAP regulations at Section 278.2(f). Appellant further maintains that store ownership has always helped low income families in the neighborhood with kids by giving them food items on credit and when they get their SNAP benefits on the 1st of each month they pay the owners back and have even done this for families without EBT. This is a big help for the business and that's why they have been able to stay in business.

The purpose of this review is to either validate or to invalidate the earlier decision of the Retailer Operations Division and is limited to what circumstances were at the basis of the action at the time such action was made. This review encompasses and documents the examination of the primary and relevant information in this case, the purpose of which is to determine whether Appellant demonstrates, by a preponderance of the evidence, that the disqualification should be reversed. In this case, therefore, if Appellant demonstrates by a preponderance of the evidence that it did not engage in trafficking with SNAP benefits, then such transactions will be considered legitimate and the disqualification reversed. If this is not demonstrated, the case is to be sustained. Assertions that the firm has not violated program rules, by themselves and without supporting evidence and rationale, do not constitute valid grounds for dismissal of the current charges of violations or for mitigating their impact. While store ownership may or may not have personally conducted the violative transactions, SNAP rules and regulations state that regardless of whom the ownership of a store may utilize to handle store business or their degree of involvement in store operations, the ownership is accountable for the proper training of staff and the monitoring and handling of all SNAP benefit transactions. The ownership remains liable for all violative transactions handled by store personnel, whether paid or unpaid, new, full-time or part-time. Additionally, a record of participation in SNAP with no previously documented instance of violations does not constitute valid grounds for dismissal of the current charges of violations or for mitigating the impact of those charges.

When the store owners signed the certification page of the SNAP retailer reauthorization application to continue operating as a SNAP retailer, they confirmed they understood and agreed to abide by program rules and regulatory provisions. They agreed to accept responsibility on behalf of the firm for violations of the SNAP including those committed by any of the firm's employees, paid or unpaid, new, full-time or part-time. This certification page specifically includes violations such as accepting SNAP benefits as payment on credit accounts or loans. The certification is clear that store ownership understood by signing the document that violations of program rules can result in administrative actions such as fines, sanctions, withdrawal, or disqualification from the SNAP. Despite agreeing to abide by SNAP rules and regulations, ownership now admits that the business allowed credit accounts, a clear violation of SNAP

regulations and rules. Additionally, the SNAP Retailer Training Guide and the SNAP retailer training video, provided to all retailers upon initial authorization and upon reauthorization, both cite credit accounts as violating SNAP regulations making it difficult to believe that store ownership was not aware that offering credit violated SNAP regulations.

Ownership's admission that the business extended credit is documented in the case file under review and is not contested. Accepting SNAP benefits for payment on credit is a violation of Section 278.2(f) and warrants a one year disqualification period as specified by Section 278.6(e)(4); this Section includes a like disqualification period for the sale of ineligible items by management personnel. It is the agency's position that credit violations constitute owner or management involvement and that a one year disqualification is the base sanction. To refute charges of trafficking, the retailer must provide adequate proof that credit accounts existed at the time the suspicious transactions occurred so that a comparison can be made with transactions outlined in the letter of charges. A level of detail regarding the legitimacy of credit accounts is necessary since retailers have long admitted to credit in an attempt to garner a lesser penalty after committing more egregious violative acts. Credit transactions must be accounted for with substantive evidence such as the dates credit was extended, to whom, for what amount, and for what items. If such exculpatory evidence is not advanced, the appropriate penalty is permanent disqualification.

In support of Appellant's admission to accepting SNAP benefits for payment on credit accounts, a program violation, Appellant submitted documentation consisting of two handwritten statements from SNAP recipients purporting to have received store credit. No credit account ledgers or other evidence were submitted by Appellant in support of this contention.

The credit documents submitted by Appellant do not provide a detailed or itemized breakdown of what food items were purchased and contain no specific details such as the customer's full name (on the first statement), address, SNAP account number, SNAP EBT card serial number, or the dates and dollar amounts of credit purchases or payments. Therefore, the documents offered by Appellant could not be connected to any of the suspicious SNAP transactions in these Attachments and therefore do not provide evidence that the store permitted credit accounts during the review period. Since Appellant was unable to account for any of the transactions outlined in the letter of charges, the transactions were then evaluated by the Retailer Operations Division to determine if trafficking occurred. The transactions showed clear and repetitive patterns of unusual, irregular, and inexplicable SNAP activity indicative of trafficking as previously discussed.

The issue under review involves a charge of trafficking SNAP benefits based on EBT transaction data. EBT transaction data is covered in SNAP regulations at 7 CFR § 278.6(a) and is addressed below. Trafficking is always considered to be the most serious violation even if it is a first offense therefore a temporary suspension or lesser penalty would not be applicable. SNAP regulations at 278.6(e)(1) clearly state that, "FNS shall . . . [d]isqualify a firm permanently if . . . personnel of the firm have trafficked as defined in § 271.2." SNAP regulations at 7 CFR § 271.2, define trafficking as, "The buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits . . . for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone . . ." SNAP regulations at 7 CFR § 278.6(a)

clearly state, in part, that “FNS may disqualify any authorized retail food store . . . if the firm fails to comply with the Food and Nutrition Act of 2008, as amended, or this part. Such disqualification shall result from a finding of a violation on the basis of evidence that may include facts established through on-site investigations, inconsistent redemption data, evidence obtained through a transaction report under **an electronic benefit transfer system**” (Emphasis added).

In the present case, the data presented in the Attachments is solely based on the SNAP electronic benefit transfer transactions conducted at the Appellant business during the period under review. This firm was selected as a result of a series of complex algorithms that make numerous data comparisons with other like type firms during the period under review. All of the transactions were then reviewed and analyzed by the Retailer Operations Division staff before the decision was made to issue a charge letter. This investigative process included a detailed examination of information obtained from various sources, including, but not limited to the inventory report and photographs from the FNS store visit on September 22, 2017, a transaction comparison and analysis of like type and larger stores, and analysis of shopping patterns for recipient households conducting transactions at the Appellant business during the review period. Additionally, there are nearby like type stores whose transaction data does not form these suspicious patterns and are therefore not at risk of disqualification for trafficking. There is also no regulatory requirement that trafficking disqualifications be based solely on on-site undercover operations.

Appellant further contends that the store owners are behind on rent and other debts and struggling to stay in business. SNAP sales have declined the last two or three years and if they were doing something wrong or involved in cash exchange, the redemptions would be going up, not down. While the owners’ contention that if they were trafficking, the redemptions would be higher sounds logical, but it may also be argued that decreasing SNAP revenues and mounting debts could be the very reasons as to why trafficking began. Appellant submitted no evidence that the business is struggling to stay solvent, but it is noted that according to the **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** database, the owner of the building is also one of the two owners of the Appellant business.

Based on this empirical data, and in the absence of sufficient evidence for the legitimacy of such transaction patterns, a conclusion can be drawn, through a preponderance of evidence that the “unusual, irregular, and inexplicable” transactions and patterns cited in the charge letter evidence trafficking as the most likely explanation for the questionable transactions listed in the charge letter Attachments. It is herein determined that Appellant did not provide a preponderance of evidence demonstrating that the transactions contained in the charge letter were more likely due to eligible food sales than not. Under review, the evidence more substantially supports a conclusion that the transaction activity in the charge letter Attachments is due primarily to trafficking in SNAP benefits.

The evidence under review shows SNAP activity indicative of trafficking. Neither the Food and Nutrition Act of 2008, as amended, nor the regulations issued pursuant thereto cite any minimum dollar amount of cash or SNAP benefits, or number of occurrences, for such exchanges to be defined as trafficking. Nor do they cite any degrees of seriousness pertaining to trafficking of SNAP benefits. Trafficking is always considered to be the most serious violation, even when the

exchange of SNAP benefits for cash is dollar-for-dollar or is conducted by a non-managerial store clerk. This is reflected in the Food and Nutrition Act, which reads, in part, that disqualification "shall be permanent upon . . . the first occasion of a disqualification based on . . . trafficking . . . by a retail food store." In keeping with this legislative mandate, Section 278.6(e)(1)(i) of the SNAP regulations states that FNS shall disqualify a firm permanently if personnel of the firm have trafficked. There is no agency discretion in the matter of what sanction is to be imposed when trafficking is involved and second chances are not an authorized option under existing regulations.

CIVIL MONEY PENALTY

A CMP for hardship to SNAP households may not be imposed in lieu of a permanent disqualification as specified in SNAP regulations at 7 CFR § 278.6(f). Trafficking is a permanent disqualification so Appellant is not eligible for a hardship CMP.

The Retailer Operations Division determined that the Appellant was not eligible for a trafficking CMP in lieu of a disqualification under 7 CFR 278.6(i) because Appellant failed to request a trafficking CMP or to submit sufficient evidence to demonstrate that the firm had established and implemented an effective compliance policy and program to prevent SNAP violations within the specified timeframe. As such, the Retailer Operations Division determined that Appellant was not eligible for a trafficking CMP in lieu of permanent disqualification.

Appellant made no mention of how the business met any of the four criteria in either its response to the charge letter or in the request for administrative review and no documentation or other evidence of any kind, including written statements, was subsequently received from Appellant in support of a trafficking CMP. Therefore, Appellant failed to meet the regulatory standard for a trafficking CMP as it did not provide substantial evidence that it met all four criteria required by 7 CFR §278.6(i). Based on the above, the Retailer Operations Division's decision not to impose a CMP in lieu of disqualification is sustained as appropriate pursuant to 7 CFR §278.6(i).

CONCLUSION

The Retailer Operations Division has presented a case that Appellant has likely trafficked in SNAP benefits. The Retailer Operations Division's analysis of Appellant's EBT transaction record was the primary basis for its determination to permanently disqualify Appellant. This data provided substantial evidence that the questionable transactions during the review period had characteristics that are consistent with trafficking violations in SNAP benefits. This is evidenced by: the suspicious patterns in two Attachments of EBT transaction data, the inadequacy of the store's staple food stock as observed during the store visit to support large transactions in short time frames, the lack of adequate evidence for customer spending habits given that there are other SNAP authorized stores located within proximity to Appellant that likely offer a greater selection of eligible food items at competitive prices, and the irregular SNAP transaction data of Appellant as compared to other like type and larger stores in the county and state.

The retailer has not provided sufficient evidence to rebut the case that Appellant most likely

trafficked in SNAP benefits. Therefore, based on a review of all of the evidence in this case, it is more likely true than not true that program violations did, in fact, occur as charged by the Retailer Operations Division. Based on the discussion above, the determination to impose a permanent disqualification against Appellant is sustained. Furthermore, Retailer Operations properly determined that Appellant was not eligible for a trafficking CMP according to the terms of Section 278.6(i) of the SNAP regulations.

RIGHTS AND REMEDIES

Applicable rights to a judicial review of this decision are set forth in 7 U.S.C. § 2023 and 7 CFR § 279.7. If a judicial review is desired, the complaint must be filed in the U.S. District Court for the district in which Appellant's owner resides, is engaged in business, or in any court of record of the State having competent jurisdiction. This complaint, naming the United States as the defendant, must be filed within thirty (30) days of receipt of this decision.

Under the Freedom of Information Act, we are releasing this information in a redacted format as appropriate. FNS will protect, to the extent provided by law, personal information that could constitute an unwarranted invasion of privacy.

ROBERT T. DEEGAN
Administrative Review Officer

March 22, 2018